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**From:** Mutter, Andrew [mutter.andrew@epa.gov]  
**Sent:** 1/28/2019 9:28:53 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]  
**Subject:** FW: Daily Clips: 1/28/2019

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**From:** Sauerhage, Maggie  
**Sent:** Monday, January 28, 2019 2:28:51 PM (UTC-07:00) Mountain Time (US & Canada)  
**To:** AO OPA OMR CLIPS  
**Subject:** Daily Clips: 1/28/2019

**Air Pollution**

The Hill: House Dems scrutinize Trump EPA air pollution policies

**Clean Power Plan Litigation**

Climatewire: Colo. bows out of Clean Power Plan challenge

**Emissions**

Denver Post: Trump rollbacks for fossil fuel industries carry steep health, environmental costs

**Science**

Greenwire: Report offers 'roadmap' to countering Trump admin

**Shutdown Impacts**

Bloomberg Environment: 'Dread and Excitement' as EPA Employees Head Back to Work

Greenwire: How the shutdown hamstrung agency's giant grant machine

Greenwire: 'Uncertainty is ... stressful' as staff return post-shutdown

Inside EPA: EPA Lawyers Face Courts' Uneven Responses To Shutdown Delays

New York Times: Government Reopens as Trump Casts Doubt on Prospects for a Border Wall Deal

**Superfund**

Associated Press: EPA's cleanup plan for East Chicago complex raises concerns

**The Hill**

**House Dems scrutinize Trump EPA air pollution policies**

<https://thehill.com/policy/energy-environment/427314-house-dems-scrutinize-trump-epa-air-pollution-policies>

**By Timothy Cama**

**01/28/19**

Top House Democrats are scrutinizing various controversial moves by the Environmental Protection Agency (EPA) to eliminate or roll back air pollution regulations.

House Energy and Commerce Committee Chairman Frank Pallone (D-N.J.) and the chairmen of two subcommittees in that panel wrote a letter probing the policies Monday, weeks after Democrats took the majority in the House. It shows that the Democrats plan to make oversight of the EPA's enforcement of the Clean Air Act a priority.

"These actions are particularly alarming in light of the recent warnings underscoring the impacts of climate change on air quality and the health of the American people," Pallone and Reps. Paul Tonko (D-N.Y.) and Diana DeGette (D-Colo.) wrote in their Monday letter to acting EPA chief Andrew Wheeler.

“Congress and the public require a more detailed explanation of EPA's actions to assess the consequences of these policy changes.”

The inquiry focuses on five policy changes from the last two years: last month's proposal to declare that the 2012 regulation on mercury emissions from coal-fired power plants is not justified; a January 2018 decision to allow certain polluting facilities to be subject to less stringent pollution technology standards; a 2017 proposal to repeal pollution rules for certain heavy-duty trucks that use older engines; a May 2018 policy to consider the costs of ambient air pollution standards and various policies that the Democrats say have sidelined science in the emissions regulatory process.

The chairmen filled out three pages of their letter with specific questions and document requests related to the policies they're scrutinizing.

## **Climatewire**

### **Colo. bows out of Clean Power Plan challenge**

<https://www.eenews.net/climatewire/stories/1060118677/>

**By Ellen M. Gilmer, E&E News reporter**

**1/28/2019**

Colorado's new Democratic attorney general is pulling the state out of a legal challenge to the Obama-era Clean Power Plan.

Phil Weiser asked the U.S. Court of Appeals for the District of Columbia Circuit on Saturday to withdraw the Centennial State from the case.

Under previous Attorney General Cynthia Coffman (R), Colorado joined more than two-dozen states in challenging the EPA rule, which sought to slash carbon emissions from the power sector.

The litigation is now on ice as the Trump administration works on a replacement rule, but it could someday be revived.

Weiser won the attorney general seat in a November upset and vowed to prioritize environmental protection and climate action.

Colorado is one of four states whose top legal positions switched from red to blue in the 2018 election (Greenwire, Nov. 7, 2018).

Michigan, another of those states, has also left the Clean Power Plan litigation. Newly seated Attorney General Dana Nessel (D) earlier this month withdrew the state from that case and two other challenges to Obama-era Clean Air Act regulations (E&E News PM, Jan. 22).

Wisconsin, another of the four states, has not moved to exit the litigation at this point.

The fourth state with an attorney general office that switched parties, Nevada, is not a main party to the Clean Power Plan case but filed an amicus brief in 2016 favoring the challengers to the regulation.

New Democratic Attorney General Aaron Ford, then a state senator, criticized the state's 2016 move at the time and expressed support for the EPA rule.

## **Denver Post**

### **Trump rollbacks for fossil fuel industries carry steep health, environmental costs**

<https://www.denverpost.com/2019/01/28/trump-energy-sector-regulation-rollback/>

**By Matthew Brown**

1/28/2019

BILLINGS, Mont. — As the Trump administration rolls back environmental and safety rules for the energy sector, government projections show billions of dollars in savings reaped by companies will come at a steep cost: more premature deaths and illnesses from air pollution, a jump in climate-warming emissions and more severe derailments of trains carrying explosive fuels.

The Associated Press analyzed 11 major rules targeted for repeal or relaxation under Trump, using the administration's own estimates to tally how its actions would boost businesses and harm society.

The AP identified up to \$11.6 billion in potential future savings for companies that extract, burn and transport fossil fuels. Industry windfalls of billions of dollars more could come from a freeze in vehicle efficiency standards that will yield an estimated 79 billion-gallon (300 million-liter) increase in fuel consumption.

On the opposite side of the government's ledger, buried in thousands of pages of analyses, are the "social costs" of rolling back the regulations. Among them:

- Up to 1,400 additional premature deaths annually due to the pending repeal of a rule to cut coal plant pollution.
- An increase in greenhouse gas emissions by about 1 billion tons (907 million metric tons) from vehicles produced over the next decade — a figure equivalent to annual emissions of almost 200 million vehicles.
- Increased risk of water contamination from a drilling technique known as "fracking."
- Fewer safety checks to prevent offshore oil spills.

For the Trump administration and its supporters, the rule changes examined by AP mark a much-needed pivot away from heavy regulations that threatened to hold back the Republican president's goal of increasing U.S. energy production. But the AP's findings also underscore the administration's willingness to put company profits ahead of safety considerations and pollution effects.

The AP found the administration has sought to bolster the changes by emphasizing, and sometimes exaggerating, economic gains while minimizing negative impacts.

For example, when calculating future damages from greenhouse gas emissions from coal plants, the Trump administration looked only at U.S. effects, instead of globally. That drastically reduced the benefits of emission restrictions and allowed the administration to conclude the Obama-era rule was no longer justified, given costs to the coal industry.

In another instance, the Environmental Protection Agency wants to stop considering secondary benefits of controlling mercury emissions — namely reductions in other pollutants projected to prevent up to 11,000 premature deaths.

Last month, the AP revealed that the administration understated the advantages of installing better brakes on trains carrying crude oil and ethanol. Transportation Department officials acknowledged they miscalculated potential benefits by up to \$117 million because they failed to include some projected future derailments.

In explaining its actions, the Trump administration said in some cases that the previous administration understated the price tag on new industry restrictions. In others, it said President Barack Obama's administration had been overly expansive in how it defined benefits to society.

Michael Greenstone, a University of Chicago professor who served as chief economist for Obama's Council of Economic Advisers, said the Trump administration was downplaying the health and environmental impacts of its actions.

“When you start fudging the numbers, it’s not that the costs just evaporate into thin air. We will pay,” Greenstone said. “They are reducing the costs for industries where pollution is a byproduct.”

The rules being targeted were largely crafted under Obama in response to climate change, the disastrous 2010 Gulf of Mexico oil spill, massive releases from coal ash dumps and fuel train explosions.

#### Administration: Negligible risks

Trump’s administration has stressed that savings for companies were greater than any increased perils to safety or the environment.

“We fully recognize every significant policy decision has a consequence and that those consequences can differ,” acting U.S. Interior Secretary David Bernhardt told the AP. “I think when you look at the track record, holistically, what you see is our deregulatory efforts are still pretty protective.”

The AP’s tally of savings was derived from government projections required under a 1993 executive order. Five of the rule changes are still pending.

On rules for toxic coal ash, offshore safety and refinery pollution, the administration said companies would save hundreds of millions of dollars with little or no added risk — an assertion former federal officials and environmental groups have disputed.

The potential industry savings were projected largely over the next decade.

Sectors of the coal industry see lifting costly rules as a matter of survival because demand has plummeted as utilities switch to cleaner-burning fuels.

For the oil and gas industry, with hundreds of billions of dollars in annual revenue, the economic impact of the Obama-era rules was comparatively small. But they were vigorously opposed as restrictions on business.

“We need to make sure we’re putting together rules that are flexible enough to apply the latest, greatest technologies,” said Erik Milito, vice president for the American Petroleum institute. He said the group focused on whether rules make sense, rather than cost savings.

Critics say the impact on public health and the environment will be even worse than projected.

“I don’t think it’s well understood what the death toll of these policies will be for the American people,” said Paul Billings, of the American Lung Association.

#### Obama climate agenda assailed

Two sweeping changes under Trump — the rollback of the Clean Power Plan that threatened to close many coal power plants and a reversal of plans to increase vehicle fuel efficiency standards — were centerpieces of Obama’s climate change actions.

Killing the power plan would save companies up to \$6.4 billion, the EPA concluded.

The trade-off is almost 61 million tons (55 million metric tons) annually of additional carbon dioxide emissions by 2030. The administration calculated that those emissions carry a maximum of \$3.2 billion in “social costs,” such as flood damage and higher air conditioning costs.

Since company savings outweighed pollution costs, the administration said scrapping the power plan was justified. That conclusion was possible largely because the EPA limited social costs to effects in the U.S., instead of globally as under Obama.

EPA spokeswoman Enesta Jones said the analysis complied with a 2003 directive under President George W. Bush that said such reviews should focus on costs and benefits to people in the U.S.

Joe Goffman, a former EPA official who helped create the clean power plan and now at Harvard Law School, said the omission of international impacts “doesn’t track with reality” given that climate change is a worldwide problem.

The Trump administration also limited pollution cost considerations in its proposal last month on mercury emitted by coal plants.

When the mercury rule was finalized in 2012, the EPA projected up to \$90 billion in benefits, including avoidance of up to 11,000 premature deaths from other power plant pollutants.

Now, the EPA says those benefits could not be considered because they are not directly tied to mercury reductions. The only benefits that should be counted, the agency said, were improvements to IQ scores as a result of less mercury exposure, valued at up to \$6 million annually.

The National Mining Association had urged the change. Spokesman Conor Bernstein said Obama’s EPA misused the concept of secondary pollution benefits to justify its actions.

The rollback’s impact is unclear since utilities already have spent an estimated \$18 billion on new pollution controls.

#### Fuel standards and drilling safety

Some experts outside government take issue with the rationale for relaxing the fuel economy rule.

The Trump administration says reducing standards would save as many as 1,000 lives annually and spare consumers and car companies hundreds of billions of dollars on vehicles with higher gas mileage. To reach that conclusion, officials lowered estimates of how many vehicles people would buy.

But economists including from the nonpartisan National Bureau of Economic Research say that assumption was fundamentally flawed, since looser standards would make cars cheaper and therefore increase demand. The economists said the government used misleading findings to wipe out at least \$112 billion in potential societal benefits while falsely claiming its change would save numerous lives.

“Every change they made was made in the direction to make the standards look more expensive and the rollback to look cheaper and better,” said Jeff Alson, who worked 40 years at an EPA lab in Michigan.

Several rules reworked under Trump tie directly to worker and public safety.

The administration rescinded requirements for improved fuel train brakes after determining the costs to industry would be higher than previously calculated. It acknowledged more spills from derailments would likely occur.

Two safety rules for offshore oil and gas drilling were adopted following the Deepwater Horizon accident, which killed 11 people and spilled 134 million gallons (507 million liters) of oil.

The Interior Department now says less rigid inspection and equipment requirements would save drilling companies hundreds of millions of dollars with “negligible” safety and environmental risks.

Lynn Scarlett, acting Interior Secretary under George W. Bush, said the changes ignore a government commission’s findings on the Gulf spill.

“You’re removing a tool that was developed intentionally to help reduce the risks,” Scarlett said. “The failure to have those protections raises the risk, such that actions can result in accidents like Deepwater Horizon.”

## **Greenwire**

### **Report offers 'roadmap' to countering Trump admin**

<https://www.eenews.net/greenwire/2019/01/28/stories/1060118759>

**By Sean Reilly, E&E News reporter**

**12/28/2019**

When EPA blocked three scientists from speaking at a Rhode Island watershed conference in late 2017, critics seized on it as an attempt by the Trump administration to muzzle researchers from publicly discussing evidence at odds with the White House's agenda on climate change issues (Greenwire, Oct. 23, 2017).

But after congressional Democrats protested, then-EPA chief Scott Pruitt was quick to assure them that the episode was an aberration. "Procedures have been put in place to prevent such an occurrence in the future," Pruitt told Sen. Sheldon Whitehouse (D-R.I.) in a letter soon after (E&E News PM, Dec. 6, 2017).

With Democrats now in charge of the House of Representatives, such hitherto isolated episodes could offer a model for challenging the administration's handling of science on a more organized footing, the Union of Concerned Scientists said in a [report](#) released this morning.

"For the first time in two years, we could see some meaningful checks and balances in Washington," said Jacob Carter, the lead author and a research scientist at the liberal-leaning advocacy organization, in a statement. "There's a lot of damage to undo, but we have a roadmap to get there."

The report, titled "The State of Science in the Trump Era," charges that the administration "has significantly undermined the role of science in government decision-making," by such stratagems as changing the rules on how agencies can use science to aid policymaking and by blocking researchers from communicating "vital" evidence.

Among a litany of examples, the report cites EPA's reshuffling of the membership on an advisory committee that plays a central role in reviews of national air quality standards; the Interior Department's cancellation of two independent studies that were supposed to examine the impact of the oil, gas and mining industries on public health and safety; and the National Park Service's decision to scrap a "science-based framework" for managing parks.

But the report also catalogs a handful of retreats that followed resistance from lawmakers or advocacy groups. In late 2017, for example, the White House dropped the nomination of Michael Dourson to head EPA's chemicals office after intense lobbying from opponents who questioned his ties to industry.

Among its recommendations, the report urges Congress to use its oversight authority to "investigate the harms" to public health and safety allegedly caused by EPA's revamped process for reviewing air quality standards and various regulatory rollbacks. Lawmakers should also investigate the possibility of "inappropriate corporate influence" on the attempt to stop the ban on the pesticide chlorpyrifos and other decisions, the report says.

It also recommends steps that are less directly related to countering the administration's agenda. Those include re-establishing the congressional Office of Technology Assessment, abolished in the mid-1990s as a cost-cutting move, and expanding access to voting, which the report says will foster federal government attention to "science-based public health and safety protections."

## **Bloomberg Environment**

### **'Dread and Excitement' as EPA Employees Head Back to Work**

<https://news.bloombergenvironment.com/environment-and-energy/dread-and-excitement-as-epa-employees-head-back-to-work-1>

**By Tiffany Stecker**

**1/28/2019**

Cinnamon rolls and cameras greeted EPA employees Jan. 28 as they returned to work on a chilly morning after a 35-day government shutdown.

Many smiled with gratitude, but very few stopped, fully aware of the workload that has accumulated after five weeks of a partial government shutdown.

"It's a mix of dread and excitement," Julie, who works in the EPA's Office of Policy, told Bloomberg Environment about returning to work. The Environmental Protection Agency doesn't allow most staff to speak to the media, and most didn't want to provide their full names for concern that it would affect their employment.

President Donald Trump signed a three-week government spending bill Jan. 25 that reopened the EPA, Interior Department, the Agriculture Department, and other agencies while the White House and Congress negotiate a plan to pay for additional security along the U.S.-Mexico border. More than 800,000 federal workers were furloughed or forced to work without pay when the last stopgap spending bill expired last month.

Andrew Wheeler, Trump's nominee to head the agency, acknowledged the stress of the shutdown in a Jan. 27 email to EPA employees. "I know that the past month has been difficult," Wheeler said. "Please know that each and every one of you and the work that you do was missed."

In addition, Wheeler said EPA employees will likely receive their back pay by Jan. 31.

Moms Clean Air Force, an advocacy organization, greeted employees at EPA headquarters in Washington with a big sign with "Welcome Back EPA Heroes" scrawled in markers. Three women and two young children with the group handed out cinnamon rolls to express gratitude to the employees. Under Trump, the EPA has backtracked on many of the regulations and initiatives developed by the Obama administration in an effort to limit regulations seen as harmful to business.

"We just want to welcome people back to work," Liz Brandt, a field organizer with the organization, told Bloomberg Environment.

#### 'A Lot of Backlog'

An EPA employee who works for the Energy Star program in the Office of Air and Radiation said she would need to take work home to meet an approaching deadline in that program.

"I'm a little bit concerned" about the workload, the employee said.

Agency employees aren't the only ones eager to get back to work. Hundreds of contractors depend on the agency staying open to sell their services and goods.

"There's a lot of backlog," one employee who works in the Office of the Chief Financial Officer said. His badge was deactivated during the shutdown and he couldn't enter his office until it was reactivated.

The shutdown allowed him to get a lot of housework done, he said, and he was able to spend more time with his dying aunt.

"It was a blessing in disguise," he said. Others couldn't wait to get out of the house.

"I'm happy to be back, my husband was getting on my nerves," an Office of Enforcement and Compliance Assurance employee said laughing.

But employees are also worried they will furloughed again if the White House and Congress don't agree on a border security plan in the next three weeks.

"I'm a little bit scared," said Julie with the Office of Policy.

## **Greenwire**

### **How the shutdown hamstrung agency's giant grant machine**

<https://www.eenews.net/greenwire/2019/01/28/stories/1060118765>

**By Kevin Bogardus**

**1/28/2019**

With the partial government shutdown over, EPA's work is just beginning.

The agency reopened today with thousands of its employees returning to work. Among their backlog will be rebooting EPA's massive grant-making apparatus, which is now saddled with missed deadlines, canceled meetings and piled-up applications.

The agency each year awards more than \$4 billion — or about half its current annual budget — in grants to states, local governments and outside organizations. In a website notice, EPA acknowledges potential problems stemming from the shutdown and says it will work with "the grantee community" to extend application deadlines and address other issues.

Scott Clow, environmental programs director for the Ute Mountain Ute Tribe, told E&E News he doesn't envy EPA for its work ahead to recover from the shutdown.

"They are going to have to work extra hard this year. When they get back to work, they are going to hit it head-on," Clow said. "They are going to have to do more work in a shorter period of time."

Clow estimates the tribe receives between \$600,000 and \$1 million in grant money annually from EPA. That funding pays for the majority of the tribe's environmental work, such as monitoring air and water quality, assessing pollutants found on its reservation, and providing scientific analysis on environmental issues facing the tribe.

"Most of it. We have a couple of other grants that help pay for it, but that is the lion's share," Clow said.

Clow has been preparing to apply for EPA's State and Tribal Assistance Grants, which were delayed by the shutdown.

"We are a month behind the whole process because the funding notice has not gone out yet," Clow said. "The further along we get, the tougher it gets for EPA to get those funding agreements out the door and funded by the end of September, which is what needs to happen. The clock is ticking, and that's worrisome."

The magnitude of any shutdown-related hang-ups is so far unclear. Asked, for example, whether Sen. Lisa Murkowski (R-Alaska), chairwoman of the Appropriations subcommittee that helps set EPA's budget, had gotten any reports of issues involving Targeted Airshed Grants and other programs, a spokeswoman said last week she had no information to share.

The shutdown has left other tribes concerned about EPA funding considered vital for their environmental work. Gerald Wagner, the Blackfeet Nation's director of environmental programs, said the agency will be facing a backlog of grant work from the shutdown.

"I'm just curious at their ability to get these grant applications read, reviewed and funded. They're already backed up six weeks," Wagner said.

Wagner submitted one application to EPA during the funding lapse for a grant under Section 319 of the Clean Water Act, which was due last week. The grant, worth a maximum of \$100,000, is key support for the tribe's environmental work.

Wagner sought guidance from EPA, only hearing back that grant deadlines would be extended, although the agency couldn't provide more details at that point. Wagner, who also serves as vice chairman of EPA's National Tribal Caucus, said at least one tribal meeting held by the agency was canceled during the shutdown.



"A lot of stuff that was planned was kiboshed," he said. "A lot of the meetings we were having, even the phone calls, were put on hold."

Wagner believes EPA might be releasing grant funds later than expected because of the shutdown.

"So instead of August, we might have to wait until next December before they release the funds," he said. "It just leaves you with that uncertainty."

Others found no one was in when they contacted EPA during the funding lapse. Laura Brion, executive director of the Childhood Lead Action Project, said she dialed into a conference call scheduled earlier this month by the agency to discuss an environmental justice grant that her Providence, R.I.-based group intends to apply for. Its closing date is Feb. 15 — the same day that funding from the latest short-term spending package to reopen the government will run out.

"We called in, and there was nobody on the other end. Not only did we not get the memo, but I don't think the memo got sent in the first place," she said.

Brion's group, which works to eliminate childhood lead poisoning in Rhode Island, has won the EPA grant before, which is worth up to \$30,000.

"I used funding like this to leverage other dollars," Brion said. "It's close enough to support one full-time organizer in a region of the state, and it's a significant part of our budget."

Now, EPA's grantees are going to have to play catch-up, too. The agency can expect to be swamped with calls and emails this week from those waiting on grant funds across the country.

"I will probably be making a lot of phone calls to figure things out," said Brion, who has questions about EPA's environmental justice grant.

Wagner said, "On Monday, I don't know if they are going to answer any calls, because they are going to have so many."

Brion said she's glad the government has reopened but hopes lawmakers can secure long-term funding soon.

"Three weeks is better than nothing, but I think we deserve a whole lot more," she said.

Reporter Sean Reilly contributed.

## **Greenwire**

### **'Uncertainty is ... stressful' as staff return post-shutdown**

<https://www.eenews.net/greenwire/2019/01/28/stories/1060118757>

**By Kevin Bogardus**

**1/28/2019**

EPA headquarters this morning as the agency reopens after the partial government shutdown ends. Kevin Bogardus/E&E News

EPA employees returned to work today after the partial government shutdown that closed the agency came to an end.

As staff filed into EPA headquarters this morning, their mood was mixed — elated to be getting back to work but worried that their return would be short-lived, given that the federal government is funded for only three weeks as lawmakers try to secure a compromise on border security.

One EPA employee outside headquarters reported being happy and excited post-shutdown, but also anxious.

"Definitely," said the employee when asked whether they were worried about the short-term spending package. "That it's only three weeks, and what can we accomplish in that time?"

Another EPA employee said staff felt "a little bit abandoned" during the shutdown. The bulk of the agency's staff, roughly 13,000 employees, were on furlough during the funding lapse.

"A little lost, not knowing what's going to happen next," said the employee, who added that the shutdown will likely only lead to more employees leaving EPA's shrinking workforce. "This is only going to fuel that, lead to more of that trend."

Acting EPA Administrator Andrew Wheeler sent an internal email obtained by E&E News to welcome employees back to the agency.

"I know that the past month has been difficult. Uncertainty is very stressful," Wheeler said in the email sent last night. "Please know that each and every one of you and the work that you do was missed. The knowledge and expertise that each of you bring to this Agency is critical to protecting human health and the environment."

Wheeler said one of EPA's first actions will be to send back pay "as quickly as possible" to staff. He noted that the agency's payroll provider will process back pay this week and employees could start seeing those wages as early as Wednesday.

Using carryover funds, EPA remained open during the shutdown's first week, which took place between Christmas and New Year's Day. That meant staff received some pay, essentially half a paycheck, during the funding lapse (Greenwire, Jan. 9).

Wheeler also directed staff to EPA's website for the funding lapse for more information, including on employee counseling, paid leave and travel.

He said he was looking forward to the agency getting back to work "full swing."

"It's great to have you back!" Wheeler said.

Other top managers at EPA welcomed staff back today.

Jeanne Schulze, president of American Federation of Government Employees Local 1003, which represents EPA Region 6 employees, said senior management greeted staff as they walked into work this morning. She also shared a letter from the Dallas office's leaders that said the shutdown kept staff from their work and "created unanticipated hardship."

"So it is time we roll up our sleeves, work side by side, and do what we do best — protect human health and environment in Region 6," said the letter, dated today and signed by Anne Idsal, the regional administrator, and David Gray, the deputy.

The agency began to rev back to life today, with its website carrying the banner, "The President has signed a continuing resolution, and EPA will be open on Monday January 28th." Agency staff expected to be swamped with calls and emails today, including on what is happening with grants and other assistance agreements (see related story).

Others were not as excited as EPA reopened. Mark Sims, president of the EPA unit of Engineers and Scientists of California Local 20, part of the International Federation of Professional and Technical Engineers, said federal contractors will not receive back pay, while small businesses that depend on federal workers suffered "a huge and unnecessary hit."

"This whole pointless shutdown was a disgrace, especially for those who were forced to work without pay. I am completely disgusted by the disrespect shown the federal workforce by those who supported the shutdown," said Sims, whose union represents EPA Region 9 employees.

Moms Clean Air Force outside EPA. Photo credit: Kevin Bogardus/E&E News

Members of the Moms Clean Air Force handed out cinnamon rolls and valentines to EPA employees heading back to work this morning after the end of the partial government shutdown. Kevin Bogardus/E&E News

Some EPA employees said they do not want to go through a shutdown again. One endorsed legislation introduced by Sen. Mark Warner (D-Va.) last week that would keep federal agencies funded, except for the White House and Congress, during a lapse in appropriations.

"I'm a real proponent of the 'Stop STUPIDITY Act,'" said the employee. That acronym stands for "Shutdowns Transferring Unnecessary Pain and Inflicting Damage in the Coming Years," according to Warner's office.

To mark the end of the shutdown this morning, environmental group Moms Clean Air Force greeted EPA employees as they exited the Metro to walk into headquarters. As activists handed out cinnamon rolls and valentines, they were greeted with some smiles and waves as well as employees saying "thanks."

Elizabeth Brandt, the group's Washington, D.C., field organizer, as well as her two daughters were part of the crew. She said she wanted EPA staff to know that they were appreciated.

"What we're hearing is that the staff at EPA feel that their work doesn't matter. It matters to me," Brandt said. "We're concerned about the policy direction of EPA, but we really appreciate the workers who do the work every day."

## **Inside EPA**

### **EPA Lawyers Face Courts' Uneven Responses To Shutdown Delays**

<https://insideepa.com/daily-news/epa-lawyers-face-courts%E2%80%99-uneven-responses-shutdown-delays>

**By Dawn Reeves**

**1/28/2019**

EPA and other just-reopened agencies face a chaotic litigation landscape as they return from the weeks-long government shutdown in part because courts took an uneven approach in responding to government requests to delay lawsuits, including some that issued stays that will remain in effect for two weeks after the shutdown ended.

While some federal courts, like those in New Mexico and Wyoming, issued blanket delays in all civil cases in which EPA and other affected federal agencies are involved, others declined to postpone anything due to the stalemate over border funding between President Donald Trump and congressional Democrats.

In several cases in federal courts in Washington, D.C., judges granted requests from the Justice Department (DOJ) on EPA's behalf to delay action until 14 days after funding is restored, around Feb. 8, meaning agency lawyers will have to scramble to comply with those stacked-up deadlines.

But even that deadline faces uncertainty as the spending agreement that resolved the shutdown expires Feb. 15, meaning those cases could be stalled again after only a week if Trump and Congress cannot agree on a long-term deal.

But in other cases, judges denied government lawyers' requests for delays, meaning they will have to comply with previously set filing deadlines.

The shutdown -- which lasted 35 days -- also prompted a potentially precedential decision from a federal judge in South Carolina who enjoined an agency that was not a defendant in the suit from issuing permits -- in part because he agreed to delay a pending challenge.

In a Jan. 18 order in *South Carolina Coastal Conservation League, et al. v. Wilbur Ross, et al.*, Judge Richard Gergel granted a request from the National Marine Fisheries Service (NMFS) to delay litigation challenging its environmental review allowing five companies to conduct seismic airgun surveys for oil and gas in Atlantic Ocean coastal waters.

But Gergel then issued a rare order under the All Writs Act enjoining the Bureau of Ocean Energy Management (BOEM), which is not a defendant, from issuing permits to the companies, to address plaintiff concerns that the bureau said it would continue to issue permits for fossil fuel activity during the partial government shutdown.

“While the request of the Federal Defendants appears reasonable under the circumstances, it would be inappropriate for the Federal Defendants to gain an advantage from a stay. . . . Therefore, the Court finds while a stay is warranted, the Court must also ensure that a stay does not thwart this Court’s orders, jurisdiction and remedial powers,” Gergel wrote in the order. “An injunction under the All Writs act is necessary so this Court can properly assess what remedies, if any, the states seeking to intervene are entitled to should BOEM issue permits during the lapse in appropriations.”

So in addition to granting the stay, he enjoined BOEM from issuing permits to conduct the seismic testing until funding is restored, DOJ responds to pending state motions to intervene, and the court rules on the motions. It is unclear when or how the court will rule on a series of motions, including pending motions from South Carolina and other states to intervene on environmentalists’ behalf and industry to intervene on the government’s side.

### Plaintiffs’ Injunctions

One industry source says that news of the ruling spread quickly among law firms which are worried that “plaintiffs will start asking for injunctions in responses to [Justice Department] motions to stay, and citing this case in support.”

The source adds there is “room for debate” as to whether the judge overreached in enjoining BOEM under the All Writs Act, noting a mixed record when such cases are taken up by the Supreme Court, which is rare. “Sometimes it has allowed the decisions to stand, sometimes not,” the source says, noting the statute is old and was enacted to give judges the power to take actions to protect their authority.

The source says it is uncertain whether DOJ will appeal -- noting that an appeal would have been impossible if the shutdown continued since its excuse for seeking the stay was a lack of funds.

The source also notes that this may be the only case from the shutdown where a judge said that if DOJ cannot represent the agency in court then the government as a whole cannot issue permits for the underlying activity.

However, it seems unlikely that the case will become a tool for other groups to cite as precedent, according to environmentalists.

“We saw the case in South Carolina [and are] not sure how it’s going to impact anything we do. In all likelihood, it’s all going to be case- and judge-specific,” says one environmentalist who challenges fossil fuel leasing and permits.

This source notes that the Western courts took a different approach to DOJ stay requests during the shutdown. For example, federal district courts in New Mexico and Wyoming issued an order staying all civil litigation against the federal government.

But the district court in Montana issued a “blanket order” saying it would not stay any proceeding or reset any deadlines because of the shutdown.

Given that, environmentalists filed at least one new lawsuit against the Bureau of Land Management’s National Environmental Policy Act (NEPA) review for a coal mine in the Montana court Jan. 16. That case, *Montana Environmental Information Center, et al. v. David Bernhardt, et al.*, challenges a second environmental assessment (EA) allowing expansion of the Bull Mountain Mine and argues that a much more detailed environmental impact assessment (EIS) is necessary.

The groups say in the filing they already successfully challenged the original EA and following that ruling there was a coal spill and fire. Yet “[o]n remand, Federal Defendants again refused to prepare an EIS, despite evidence that, among other things, the mine expansion would cost the public billions of dollars from pollution from coal combustion, the air pollution from burning the coal will have significant health impacts on everyone downwind, the thousands of coal trains from the mine will repeatedly violate the Clean Water Act by spilling coal into Montana’s waters without a permit, and the mine expansion and the resulting coal trains may adversely affect threatened and endangered species, including grizzly bear.”

#### Case-Specific Approach

Other courts took a more case-specific approach.

The U.S. Court of Appeals for the District of Columbia Circuit denied at least five requests for holds on EPA cases, including most recently rejecting one to delay a lawsuit brought by Maryland and Delaware challenging the agency’s rejection of their petition to limit pollution transport from upwind states.

But the court on Jan. 24 granted an unopposed request to stay the deadline for EPA to file a status report on its proposed Affordable Clean Energy (ACE) utility greenhouse gas rule due to the shutdown until 14 days after appropriations are restored.

And on Jan. 17 it took similar action in a case where trailer makers are challenging an Obama rule that requires them to limit their GHGs, delaying the agency’s 90-day status report until 14 days after funding is restored.

In a related case challenging an Obama-era GHG rule for new power plants, environmentalists are objecting to EPA’s delay request, both filed on Jan. 22. The court has not yet issued a response in that case, North Dakota v. EPA.

One environmentalist explains the objection was filed because of “moving parts” with the proposed replacement rule, which had a Feb. 19 comment deadline in place before the shutdown began Dec. 21. A required public hearing has not occurred due to the shutdown and under federal rules the docket must be kept open 30 days after the hearing.

“With the government shut down and no one letting us know what is up, pushing DOJ to provide information there seemed like an appropriate avenue,” the source explains, adding there are no pending deadlines surrounding the ACE/Clean Power Plan lawsuit so the groups did not object to that stay request.

Finally, DOJ lawyers filed a Jan. 18 request to extend a deadline to file a joint status report Jan. 22 with the federal district in Washington, D.C. in a case brought by the Union of Concerned Scientists (UCS). The group is seeking documents from the Department of Energy and the Federal Energy Regulatory Commission over the administration’s “coal bailout” plan. The court has not responded to the request through UCS does not plan to object, a spokeswoman says.

#### New York Times

##### Government Reopens as Trump Casts Doubt on Prospects for a Border Wall Deal

<https://www.nytimes.com/2019/01/28/us/politics/trump-border-wall-deal.html>

By Eileen Sullivan and Alan Blinder

1/28/2019

WASHINGTON — Hundreds of thousands of federal employees returned to work on Monday with a presidential promise of a paycheck “very quickly” but no guarantee that they will be working in three weeks, when a temporary stopgap of funding expires.

President Trump and congressional Democrats arrived at a short-term agreement late on Friday, reopening the government after 35 days and the longest government shutdown in history. Lawmakers have until Feb. 15 to reach a

compromise on the Republican request for billions of dollars to be allocated for a border wall — a wall Democrats have refused to fund.

Referring to the odds that a deal could be struck over that time, Mr. Trump told The Wall Street Journal on Sunday, “I personally think it’s less than 50-50.” Mr. Trump said he would use emergency powers to fund the wall if an agreement could not be reached.

In a stark reminder that federal employees were returning to work with the knowledge that they might be forced to go without a paycheck once again next month, one federal agency, the Department of Agriculture, updated its employee information website and said, “We will also leave some of the shutdown-related material up for a period time, should you need to refer back to it.”

Richard Nagle, a lawyer with the Environmental Protection Agency in Chicago, said returning to work after a mandatory furlough required some digging out.

“It’s triage,” he said, eyeing his email inbox. “I’m going to go through the ones that are screaming for attention. I haven’t been on voice mail yet, but I’m sure that’s capped out at 32 messages.”

In the first hour of his day, one question seemed to be echoing through the halls: What did you do?

Colleagues were sharing stories of how they passed the time while they were furloughed. Pretty much everyone confessed to sleeping a little later than usual. Basements were cleaned out, digital photos were organized, hardwood floors were scrubbed until they were gleaming.

Some employees took road trips, visiting extended family in Michigan or driving down to Memphis, eight hours away. Anything to stave off the boredom and anxiety of being home, unpaid, during a Chicago winter.

As employees streamed into the office, managers stood in the lobby, handing out informational papers on things to know: how to apply for back pay, what to do if you forgot your passwords. Some supervisors brought in sweet treats. There were nudges about projects that had been put on hold — and, in some cases, forgotten — and hurried meetings to figure out what could be accomplished before the next potential shutdown.

At a Federal Emergency Management Agency office in Fort Worth, some employees felt like they were racing against the clock.

“They’re trying to get as much work as they can get done before flood season, tornado season and hurricane season,” said Steve Reaves, a safety officer for FEMA who also leads the union for FEMA employees. “With us, it’s do as much we can before they try to do this again.”

Senior officials on Monday both welcomed their workforces and tried to reassure them about the weeks to come.

“I encourage you all to take time to talk to each other about the past few weeks and be transparent with your supervisors about any hardships,” Brock Long, the FEMA administrator, wrote in an email on Monday morning. “I also want to be clear that there is no higher priority than to guarantee, for those who missed paychecks, that you get paid as quickly as possible.”

But Mr. Long acknowledged that reopening the government was not as simple as turning a light-switch.

“While there is important work to be done, I want to make sure that you are set up for success before jumping into your normal assignments,” he wrote. “Please allow time for updates and reboots to computers, addressing expired passwords, syncing mobile devices, managing benefits and organizing your work space. Supervisors have been provided checklists that should be helpful. Again, please also take the time to listen and support each other.”

Ryan Baugh, a Department of Homeland Security statistician and a steward for the American Federation of Government Employees, said the possibility that there could be another shutdown had a damaging effect, raising questions about what could realistically be scheduled — meetings, trainings, projects — given the uncertainty.

“We’ll work hard for three weeks, and then we’ll see what happens,” he said. “You could still use the word ‘hostage.’ We’re still the bargaining chip here.”

The morning commute on Monday in the Washington area was once again bustling after an eerily quiet month of little road traffic during peak travel hours and open seats on trains and buses.

At a Metro station near the Environmental Protection Agency’s headquarters in Washington, a small group of environmental activists with the nonprofit group Mom’s Clean Air Force welcomed E.P.A. employees back to work with cinnamon rolls.

“Welcome back! Cinnamon roll?” Elizabeth Brandt, a field organizer for the group, chirped as employees rode up the Metro escalator. Ms. Brandt, holding her daughters, Valencia, 5, and Natalia, 3, said that having grown up next to a toxic cleanup site in Tacoma, Wash., it was important to her to make sure the agency’s workers knew their work was valued.

“I don’t often get a chance to thank people who do that work the way I thank our pediatrician and the people who give my kids shots,” she said.

E.P.A. employees for their part said they were relieved to be back to work yet anxious that the reprieve from the partial government shutdown could be short-lived.

“Most of us cannot afford to be without pay for a month,” said Denise Walker, an agency lawyer. “It’s very stressful for people.”

The National Park Service reopened on Sunday, but prospective visitors were encouraged to check with individual parks to make sure they were indeed receiving visitors. Smithsonian museums and the National Zoo were set to reopen on Tuesday.

Federal workers who had turned to food banks to feed their families continued to struggle to make ends meet as they returned to work on Monday. Some federal employees have been working without pay for weeks. And many federal contractors are not expected to be paid at all for the days the government was closed.

Jamie Rodny, an investigator at the Housing and Urban Development office in Los Angeles, said she was both excited to return to work and scared she would be facing the same situation in three weeks. She was told she would not see a paycheck on Monday, and said her branch chief told her that he had heard they might get paid on Thursday.

Ms. Rodny, who works for the Fair Housing and Equal Opportunity division, which oversees the enforcement of federal housing laws, said she arrived at her office to find frantic emails and voice mail messages from people whose cases she was forced to drop when the government closed. Now, as she returns these messages, she expects to hear that some of those complainants were evicted over the past 35 days or are facing debts because of the forced lull in their cases.

“Where do I start,” she asked.

Ms. Rodny spoke at the Women’s March in Washington earlier this month, after she was approached by her labor union, the National Federation of Federal Employees, about the financial and emotional pain of workers affected by the shutdown. Her family lives paycheck to paycheck, she said, and during the break in pay, they used their credit cards for as many purchases as possible, which resulted in her credit score dropping. She said they were able to make their mortgage payment because of donations they received through a GoFundMe campaign. She recently started an activist group called “Stop Government Shutdowns Forever.”

The president promised the 800,000 employees who had been furloughed or forced to work that they would be paid “very quickly or as soon as possible,” without providing a specific date. The White House Office of Management and Budget directed agencies to prioritize pay and benefits after reopening.

Some federal agencies worked through the weekend in an effort to get paychecks to their workers as soon as possible. The Department of Agriculture instructed its employees to file their time sheets by noon on Monday and pledged to resume direct deposits into bank accounts by Thursday. On Sunday, the commissioner of the Customs and Border Protection agency, Kevin K. McAleenan, addressed employees on Twitter to say that the agency had already approved a majority of the timecards and pledged to work to make sure everyone is paid soon.

Aware of the looming Feb. 15 deadline, some lawmakers are trying to pass a law that would outlaw future government shutdowns.

“Shutting down the government should be as off limits in budget negotiations as chemical warfare is in real warfare,” Senator Lamar Alexander, Republican of Tennessee, said on Friday.

#### **Associated Press**

#### **EPA’s cleanup plan for East Chicago complex raises concerns**

<https://www.apnews.com/e32dd3fa3f694f4aa19f09aa9ed98d68>

**1/27/2019**

EAST CHICAGO, Ind. (AP) — Northwestern Indiana residents have raised concerns that a cleanup plan for a public housing complex doesn’t go far enough and could cause future issues for people living near the site.

East Chicago residents are unhappy with the U.S. Environmental Protection Agency’s cleanup plan for the West Calumet Housing Complex, The (Northwest Indiana) Times reported.

The EPA’s seven-month, \$26.5 million cleanup plan for Zone 1 of the Superfund site calls for a 2-foot-deep removal of lead- and arsenic-contaminated soil. The soil would then be treated and disposed of at another location.

Residents are concerned about a contingency that allows the agency to use a less stringent cleanup plan if the city moves forward with industrial, instead of residential, redevelopment.

The East Chicago Calumet Coalition Community Advisory Group and local group Calumet Lives Matter prefer a nearly \$50 million cleanup plan that would go down to the depths of clean native sand.

The advisory group argues that the EPA’s preferred plan isn’t ideal because it leaves behind contamination that is deeper than 2 feet, which would limit future residential development options.

The EPA said it aligns site cleanups with how the property owner plans to use the land. Mayor Anthony Copeland informed the agency last year that there are two industrial or commercial developers interested in the site.

More than 1,000 people, including about 700 children, were forced from the housing complex after 2016 tests found high lead levels in blood samples from some children and some yards with lead levels over 70 times the U.S. safety standard. Work to demolish the complex finished last year.

The EPA then took public comments on the cleanup plan until Jan. 14. The agency recently cancelled a public hearing on the issue that the community had requested because of the partial federal government shutdown.